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Appendix Z

Glossary of Terms[1]

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To understand immigration law, it is crucial for an attorney, victim advocate, judge, law enforcement officer and/or prosecutor to understand the most commonly used terminology. The following brief descriptions of terms are relevant to assisting adult and child immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking, elder abuse, and immigrant children who have suffered child abuse, abandonment or neglect. The terms are organized alphabetically.

A# - Immigration case file number that is assigned to an individual that applies for an immigration benefit or when any form of immigration enforcement action has been initiated against them. This is a number made up of eight digits (beginning with A).

Adjustment of Status – An individual with an approved immigrant visa (family, employment, diversity lottery, special immigrant juvenile, special immigrant religious worker), or an approved self-petition under VAWA may, under certain circumstances, file an application (Form I-485) for permanent resident status without leaving the United States. This process is called adjustment of status. In all cases, DHS has discretion whether or not to grant lawful permanent residence. If DHS grants adjustment of status, the individual will then receive a Resident Alien Card (*commonly referred to as a "green card", see definition below*) and will become a lawful permanent resident.

A-File – This is the immigration case file created by DHS. It contains the immigrant's "Alien Registration Number.' which is the immigration case file number. This number always starts with the letter "A". All foreign born persons who have attained legal immigration status, naturalized or ever been detained or placed in immigration court proceedings will have "A" numbers. Finding a safe way to attain or copy down this number can be very helpful when an immigrant victim is abused by an immigrant spouse, parent or family member.

Alien – This is a term that is offensive to some, but should be understood in the context of how the term is used in the Immigration and Nationality Act, other statutes, the code of federal regulations, and the Department of Homeland Security or other government policy memoranda. The Immigration and Nationality Act defines the term 'alien' as any person who is not a citizen or national of the United States. Practically speaking, this term

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covers a broad group of people including but not limited to permanent residents, refugees, asylees, people granted other forms of legal immigration visas, people who enter with visas and then overstay, and people who enter the U.S. without inspection.

Asylum – Asylum is humanitarian immigration relief given to individuals present in the United States who meet the requirements for "refugee" status. *(See "Refugee" definition below.)* In general, asylum seekers must file within one year of first entering the U.S. although an applicant may qualify for an exception to this rule. If an asylum seeker's application is not approved by DHS, she will automatically be referred to immigration enforcement authorities and placed in removal proceedings where she will have the opportunity to renew her asylum application before an immigration judge. Denial of an asylum application by an immigration judge results in an order of removal from the United States. See Chapter____ on Asylum.

Attorney General – A reference that may, in fact, actually mean the Secretary of Homeland Security. While the Homeland Security Act of 2002[2] transferred functions of the Immigration and Naturalization Service (INS) from the Department of Justice to the Department of Homeland Security, it did not change every authority-delegation reference in the Immigration and Nationality Act (INA) and other laws. Instead, it included a savings provision[3] stating that statutory, regulatory, and other references relating to an agency that is transferred to DHS, or delegations of authority that precede such transfer shall be deemed to refer, as appropriate, to DHS (and its officers), or to its corresponding organizational units.

Battered Spouse Waiver – Conditional permanent residents who are victims of abuse may be able to get a waiver to exempt them from needing their spouse's signature on their petition to remove the conditions on their status and become a lawful permanent resident. The applicant must also prove that their marriage to a United States citizen was entered into in good faith. They must submit an affidavit containing information about their relationship and a declaration regarding the abuse. They should also submit any other evidentiary support for the abuse that they may have.[4] [See "Conditional Permanent Residence"].

Battery or Extreme Cruelty – This is the term used in United States immigration law to define domestic violence. Victims of battery or extreme cruelty can be eligible to receive the special immigration relief available to victims of domestic violence. "*Battery or extreme cruelty"* is a form of abuse inflicted upon another person that includes, but is not limited to, any actions that cause or threaten to cause physical, mental, psychological, or emotional harm, and any actions or inaction that is a part of an overall pattern of abuse, power, or control.[5] These include acts that destroy the peace of mind and happiness of the injured party or cause distress and humiliation to the injured party. Rape, molestation, forced prostitution, incest, and other forms of sexual abuse are also considered forms of battery.[6]

Bona Fide T-Visa[7] **-- The** bona fide determination is a DHS determination that a T-visa application is complete and establishes prima facie eligibility for a T visa. DHS makes this determination early on in the adjudication. Receipt of a bona fide determination allows T visa applicants to obtain certification from HHS which allows them to access public benefits.

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[2] Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002); *see* INA § 245; 8 USC §1255 (regarding the bases of eligibility and ineligibility).
[3] Homeland Security Act at §1512(d).
[4] *See* Cecilia Olavarria & Moria Fisher Preda, *Chapter 3.5 Additional Remedies Under VAWA: Battered Spouse Waiver*, *in* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, BREAKING BARRIERS (2015), http://niwaplibrary.wcl.american.edu/pubs/ch3-5-battered-spouse-waiver/.
[5] *See Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (holding any act of physical abuse constitutes domestic violence while "extreme cruelty" refers to "all other nonphysical manifestations of domestic abuse).
[6] *See* 8 C.F.R. § 204.2(c)(1)(vi) (CIS regulations defining "battery and extreme cruelty). *See also* Cecilia Olavarria & Moria Fisher Preda, *Chapter 3.5 Additional Remedies Under VAWA: Battered Spouse Waiver*, *in* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, BREAKING BARRIERS (2015), http://niwaplibrary.wcl.american.edu/pubs/ch3-5-battered-spouse-waiver/.
[7] 8 C.F.R. §214.11.

Cancellation of Removal – Cancellation of removal is a discretionary form of relief that certain non-citizens in removal proceedings may request.[8] If granted, cancellation of removal accords the applicant permanent resident status. Under VAWA, certain abused spouses, children, and parents of abused children are eligible for a special form of cancellation of removal when the abuser is a U.S. citizen or a lawful permanent resident.

Child – Under immigration laws the definition of child is different that under many state family law statutes. The immigration law definition of child is important because children can be eligible to receive legal immigration status based upon their relationship to a parent who is a citizen or lawful permanent resident or who received legal immigration status. Under immigration law a person qualifies as a child of someone if they are:

- Under the age of 21;
- Unmarried; and
- Biologically the child, whether legitimated or not;
- A stepchild as long as the marriage creating the step-relationship occurred before the child attained 18 years of age; or
- A child adopted while under the age of 16; or when the child was an orphan.[9]

Civil Protection Order (CPO) – A justice system family court remedy initiated by a victim to protect herself/himself from future abuse. All persons are entitled to this protection regardless of immigration status. It is a particularly valuable remedy for battered immigrant women because it can be crafted to uniquely address and counter abuse, power, and control in her relationship.[10] Since the victim initiates the process, she need not rely on the criminal courts and may obtain a CPO regardless of whether there is a criminal prosecution of her abuser. Protection orders may contain a wide range of remedies aimed at reducing ongoing abuse, control, and harassment. These may include: granting the victim custody of children and ordering the abuser to pay child support, ordering that the abuser leave the family home, prohibiting the abuser from contacting or harassing the victim's other family members, directing him to hand over important documents, including immigrations documents to the victim, and not interfering with her immigration application. A victim can obtain an emergency or temporary protection order (also called TPO) that typically lasts 14- 30 days, as well as a full protection order that usually lasts 1-3 years and is renewable. (Please note: law differs by state).

Conditional Permanent Residence – When immigrants who are spouses of U.S. citizens are married for less than two years at the time of their interview with DHS to receive permanent residency, DHS grants them conditional permanent residency instead of full, unrestricted lawful permanent residency. This requirement was created to prevent marriage fraud. While most conditional permanent residents immigrate to the U.S. through marriage to a U.S. citizen, some immigrant investors are also given conditional permanent residence and are also subject to the two-year filing requirement.

A conditional permanent resident has all the privileges of a lawful permanent resident, but has only a temporary status for two years. A conditional permanent resident must file a petition to remove conditions two years after becoming a conditional permanent resident. This petition is filed using Form I-751. Generally the petition to remove conditions must be filed jointly with both spouses signing the form. However, if a joint petition is not possible due to divorce, domestic violence, or extreme hardship, the conditional permanent resident may file a request for a waiver of the joint-petition filing requirement.[11] (See "battered spouse waiver"). Spouses of

[8] ICE is the agency charged with the enforcement of immigration laws.
[9] INA §101(b)(1), 8 U.S.C. §1101(b)(1) (Not only are these terms of art as defined in the statute, but there is substantial case law interpretation with respect to these different categories).
[10] *See* Leslye E. Orloff, Laura Martinez, Soraya Fata, Rosemary Hartman & Angela Eastman, *Chapter 14: Protection Orders for Immigrant Victims of Sexual Assault, in* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2014), http://niwaplibrary.wcl.american.edu/pubs/ch14-protectionorders-sa/.
[11] INA § 216(c)(4); 8 U.S.C. § 1186(c)(4).

lawful permanent residents generally do not receive conditional permanent status because by the time their priority date comes up (see definition below), they usually have been married for more than two years, and thus receive full lawful permanent residency.

Continuous Physical Presence – This term refers to the requirement that an immigrant must show that they have continuously lived in the United States, without leaving the country, for a specified period of time in order to qualify for certain forms of relief. Continuous Physical Presence must be proven in order to establish eligibility for various forms of immigration relief, including adjustment of status to a lawful permanent resident based on a T visa, U visa, and cancellation of removal (including VAWA cancellation of removal).

Continued Presence – Continued Presence is a temporary form of protection provided to certain victims of a severe form of trafficking. Continued presence is technically not an immigration status, but rather refers to the government's use of a variety of mechanisms, such as deferred action and parole, to protect a victim from removal in the short-term. Victims can not directly request Continued Presence, but rather it must be requested by federal law enforcement officials on behalf of the victim. Continued Presence allows the victim to receive work authorization as well as certification through HHS for access to public benefits and social services.

Cuban Adjustment Act of 1966 – The Cuban Adjustment Act (CAA) allows for Cubans (both natives and Cuban citizens) to file and change their immigration status to lawful permanent residents as long as they were inspected and admitted or paroled into the United States after January 1, 1959. They must have been physically present in the U.S. for at least one year, and the general requirements for lawful permanent residency must be met. Spouses and children are also eligible to receive lawful permanent residency through the Cuban Adjustment Act, regardless of their citizenship and/or place of birth provided that they are residing with their spouse or parent who is a Cuban Adjustment Act applicant in the United States. Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Cuban even if he never applied for lawful permanent residency under the Cuban Adjustment Act. VAWA CAA self-petitioners are not required to show that they are currently residing with the spouse or parent in the United States.[12] (See VAWA section at end of this chapter).

Customs and Border Patrol (CPB) – This is the division of the Department of Homeland Security that oversees borders and ports.

Deferred Action Status – Deferred Action Status is an agreement by Department of Homeland Security personnel that they will not take action to remove (deport) an individual from the United States. It is an exercise of prosecutorial discretion making the immigrant's case a lower priority for removal. Deferred action does not however, give the immigrant victim any form of legal immigration status.[13] In VAWA self-petitioning cases this status is often granted along with approval of the VAWA self-petition. U visa victims receiving interim relief are also granted deferred action status. In trafficking cases deferred action is assessed as part of continued presence. Once a victim obtains their U visa, T visa or their lawful permanent residency based on their approved VAWA self-petition, they no longer need deferred action status to avoid deportation and remain legally in the United States. Deferred action status in cases of VAWA, T and U visa victims is granted by the VAWA unit at the Vermont Service Center. (See VAWA Unit).

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[12] "An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies (or 2 years after the date of enactment of VAWA 2005, whichever is later), or for 2 years after the date of termination of the marriage (or 2 years after the date of enactment of VAWA of 2005, whichever is later) if there is demonstrated a connection between the termination of the marriage and the battering or extreme cruelty by the Cuban alien." VAWA §823 2005.

[13] "New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status." New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

Deferred Action for Childhood Arrivals (DACA) – DACA provides temporary protection from deportation and work authorization for a period of two years for immigrants who meet the following criteria: Were under the age of 31 on June 15 2012;; arrived in the U.S. before their 16th birthday; are over 15 at the time of their application for DACA; entered the U.S. without inspection before or were without legal immigration status on June 15, 2012; have continuously resided in the United States since June 15, 2007; are currently attending high school or have graduated from high school, have a GED or honorably served in the armed forced; have not been convicted of a felony, significant misdemeanor, or three or more misdemeanors; and do not pose a threat to public safety or national security.

Department of Homeland Security – Formerly the Immigration and Nationality Service, this agency administers and enforces immigration laws. United States Citizenship and Immigration Service ("USCIS"), a division of DHS, oversees adjudications of immigration benefits. Another division of DHS, called the United States Immigration and Customs Enforcement ("ICE"), handles immigration enforcement, detention, and removal. United States Customs and Border Patrol ("CBP") is the division that oversees borders and ports.

Derivative – The "derivative" is a term describing specified family members that an applicant for immigration relief can as a matter of law ask DHS to grant legal immigration status as part of the immigrant's application. These family members are able to obtain lawful immigration status by virtue of the immigrant applicant's qualification for immigration relief. Each type of immigration benefit specifies in the statute which family relationships, if any, can gain legal immigration status based on the immigration application being filed. Which family members can apply varies depending on the type of immigration benefit or benefits that a victim qualifies to receive. The family relationships that often qualify for immigration benefits as "derivatives" typically include the applicant's spouse or child. If the applicant is under 21 years old, the family members they most often could include in their applications are their parent and/or their siblings who are under 21 years of age and unmarried. VAWA self-petitioners and T and U visa applicants can help certain family members attain legal immigration status through their immigration case. When victims qualify for multiple forms of immigration benefits, which family members can apply along with the victim can be a factor in the victim's decision about which immigration benefit to apply for.

Department of Homeland Security (DHS) – This department administers and enforces the immigration laws. There are seventeen components to the department, including Immigration and Customs Enforcement (ICE), Citizen and Immigration Services, (CIS), and Customs and Border Protection (CBP).

Deportation – This term was used prior to 1996 to describe what is now called removal. *(See "removal" explanation below).*

Documented immigrants – They reside in the U.S. pursuant to a valid visa, and either entered the U.S. with valid visas or obtained status after entry. Those entering on immigrant visas are often petitioned for by a family member or an employer. Some obtain visas to become lawful permanent residents. Other examples of documented immigrants[14] include individuals holding tourist visas, student visas, exchange visitor visas, or employment visas.

Emergency Medicaid – Emergency Medicaid is available in all cases where a person needs treatment for medical conditions with acute symptoms that could place a patient's health in serious jeopardy, result in serious impairment of bodily functions, or cause dysfunction of any bodily organ or part.[15] This definition includes all

[14] Immigration experts may refer to immigrants with these visas as "non-immigrants."
[15] Social Security Act, Title XIX § 103(v)(3), 42 U.S.C. § 1396b(v)(3).

labor and delivery during childbirth. Emergency medical assistance must be provided to all immigrants regardless of their immigrant status.

Employment Authorization – All non-U.S. citizens and those who are not lawful permanent residents are required to receive permission from the Department of Homeland Security in order to accept employment. Some temporary forms of legal immigration statuses, such as H-1B visas, T-visas, and U-visas allow the status holder to work. Some other forms of temporary legal immigrant statuses, such as tourist visas and student visas, do not allow for employment. If an immigrant is in a status that allows for work only with a specific employer, he or she will not need anything other than the visa approval notice as evidence of employment authorization. If he or she is in a status that allows for work without restrictions, he or she generally may obtain an employment authorization card by filing a request on a Form I-765. Employment authorization documents are normally valid for one year. Employment authorization is not a "stand alone" benefit. It is only granted to a person who has demonstrated eligibility for some type of temporary or pending immigrant status. There is special employment authorization available for battered spouses of immigrants who come to the United States under specified work related visas – "A" visas (diplomats); "E(iii)" visas (Australian Investor); "G" visas (international organization); or "H" visas (temporary workers).[16]

Employment Based Petitions[17] – The eligible categories based on employment, as described by USCIS,[18] are:

EB-1 Priority workers

- Foreign nationals of extraordinary ability in the sciences, arts, education, business or athletics
- Foreign national that are outstanding professors or researchers
- Foreign nationals that are managers and executives subject to international transfer to the United States

EB-2 Professionals with advanced degrees or persons with exceptional ability

- Foreign nationals of exceptional ability in the sciences, arts or business
- Foreign nationals that are advanced degree professionals
- Qualified alien physicians who will practice medicine in an area of the U.S. which is underserved.

EB-3 Skilled or professional workers

- Foreign national professionals with bachelor's degrees (not qualifying for a higher preference category)
- Foreign national skilled workers (minimum two years training and experience)
- Foreign national unskilled workers

EB-4 Special Immigrants

- Foreign national religious workers
- Employees and former employees of the U.S. Government abroad

From the USCIS website "Working in the United States[19]*"*

Only a limited number of employment visas can be issued each year. Applicants may therefore have to wait several years between filing the application and the issuance of an employment based visa.

Executive Office for Immigration Review (EOIR) – A branch of the Department of Justice that includes the Board of Immigration Appeals (BIA), Office of the Chief Immigration Judge (and all the immigration judges), and the Office of the Chief Administrative Hearing Office (OCAHO).

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[16] INA § 106, 8 U.S.C. § 1106.
[17] INA §101(a)(15)(E), 8 U.S.C. §1101(a)(15)(E) (2008).
[18] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *Permanent Workers* (Jun. 2017) https://www.uscis.gov/working-united-states/permanent-workers (last visited Mar. 30, 2018)
[19] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *Permanent Workers* (Jun. 2017) https://www.uscis.gov/working-united-states/permanent-workers (last visited Mar. 30, 2018)

Extreme Hardship – Suffering extreme hardship is a requirement to obtain several different types of immigration relief,[20]such as cancellation of removal under VAWA. These forms of relief require proof of hardship over and above the general economic and social disruptions in an immigrant's home country. The applicant must show that they would suffer extreme hardship if removed from the United States.[21] Victimization related factors can be used as proof of extreme hardship for immigrant victims.[22] Proof of extreme hardship is needed before an immigration judge will grant cancellation of removal under VAWA.

Family-Based Petition – A U.S. citizen or lawful permanent resident files a family-based visa petition to start the process that will enable his or her family member (spouse, child, parent, adult son or daughter, sibling) to immigrate, or lawfully remain, in the United States and become a lawful permanent resident. Family and employment based immigration applications have long processing times. When an application is filed for an immigrant visa the applicants are assigned a priority date for the immigration case (usually the date they filed). They must wait for their priority date to become current before they can apply for lawful permanent residency.

Fiancé(e)s of U.S. Citizen (K-1 visa) – An immigrant granted a fiancé visa (K-1 visa) is allowed to come to the United States to conclude a valid marriage with a U.S. citizen within 90 days after entry.[23]

Food Stamps – The Food Stamps program provides vouchers to low-income individuals so that they can use the benefits to buy food. Food Stamps eligibility for most non-citizens was eliminated by PRWORA as of August 22, 1996. Battered immigrants who entered after August 22, 1996 must be in "qualified immigrant" status for five years in order to receive food stamps. All "qualified immigrant" children under 18 are immediately eligible for food stamps regardless of date of entry. It is important to note that for immigrant victim self-petitioners this means that undocumented children included in their mother's self-petition are eligible to receive food stamps once their mother's VAWA self-petition has received a prima facie determination.

Freedom of Information Act – The U.S. Freedom of Information Act (FOIA) is a law ensuring public access to U.S. government records. FOIA carries a presumption of disclosure. If the government refuses to disclose information, it has the burden of explaining why that information may not be released. Upon written request, agencies of the United States government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in the FOIA. This right of access is ultimately enforceable in federal court. As part of a protection order, a family court case, or a bond order, courts can order an abuser who has filed immigration papers for his spouse, child, or parent to complete a FOIA request that releases information in the immigration case that was filed on the victim's behalf by the abuser to the victim, her representative or lawyer.

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[20]E.g. hardship waiver of the two-year joint filing requirement INA §216(c)(4), 8 U.S.C. § 1186a(c)(4); *See also* Rebecca story, Cecilia Olavarria & Moria Fisher Preda, *Chapter 9: VAWA Cancellation of Removal*, *in* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2014), http://niwaplibrary.wcl.american.edu/pubs/ch9-vawa-cancellation-of-removal/

[21] For more information including the factors that can prove extreme hardship non-VAWA immigration cases *See* Rebecca Story, Cecilia Olavarria & Moira Preda, *Chapter 9: VAWA Cancellation of Removal*, *in* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2014), http://niwaplibrary.wcl.american.edu/pubs/ch9-vawa-cancellation-of-removal/

[22] The following list of abuse related factors is provided in the VAWA cancellation regulations. 8 C.F.R. §§ 1240.20(c) and 1240.58(c): The nature and extent of the physical and psychological consequences of abuse ; the impact of the loss of access to the U.S. courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, , maintenance, child custody, and visitation); The applicant's or applicant's child's need for social, medical, mental health, or other supportive services, which would not be available or reasonably accessible in the foreign country; The existence of laws and social practices in the home country that would penalize the applicant or applicant's child for having been victims of domestic violence or have taken steps to leave an abusive household; The abuser's ability to travel to the home country, and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's child from future abuse; The likelihood that the abuser's family, friends, or others acting on the abuser's behalf in the home country would physically or psychologically harm the applicant or the applicant's children. Other factors can also contribute to Extreme Hardship (See Cancellation of Removal Chapter) *See also* INS Memorandum from Paul Virtue, INS General Counsel, *Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children* (October 16, 1998).

[23] INA §101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i); 8 CFR §214.2(k).

Good Faith Marriage – A marriage that is entered into between a US citizen or lawful permanent resident and an immigrant for the primary purpose and intent of building a life together as husband and wife. A marriage is not considered in good faith when the marriage was only for the purpose of gaining immigration benefits, citizenship or circumventing immigration laws.

Good Moral Character (GMC) – For many immigration remedies, it is necessary to show that a person has "good moral character" and has not committed certain crimes or engaged in other activities such as prostitution or illegal gambling. Good moral character is not precisely defined in the immigration laws, but Section 101(f) of the Immigration and Nationality Act lists certain acts that preclude someone from establishing good moral character.

Green Card (Lawful Permanent Resident Card) – Popular term for the I-551, the card that shows a person is a lawful permanent resident. Lawful permanent residency cards may be permanent "10-years". Although these cards on their face state that they end in 10 years, lawful permanent residency does not end at that time. The immigrant with lawful permanent residency needs only to file to receive a new card once every 10 years. The application for a new card needs to be filed before the old card expires. Some immigrant victims seeking help will have a lawful permanent residency card with an end date two years after the card was issued. These immigrant victims have "conditional permanent residency", and may qualify for a "battered spouse waiver" and will not need to file a "VAWA self-petition." See "adjustment of status," "conditional permanent residency," "Self-petition," and "battered spouse waiver."

Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) – HRIFA provides that Haitians (natives, citizens, and nationals) who were continuously physically present in the United States since before December 1, 1995, can adjust their status to become lawful permanent residents as long as their applications were filed before April 1, 2000 and the general requirements for lawful permanent residency are met. Spouses, children under 21 years, and unmarried sons and daughters of an eligible immigrant can also receive lawful permanent residency under HRIFA if they are Haitian and in the United States on the date the application is filed. HRIFA allows applicants to prove continuous presence even when they were absent from the United States for a time period of up to 180 days. (See "continuous presence"). Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Haitian even if the abusive Haitian spouse or parent never applied for lawful permanent residency under HRIFA. (See VAWA self-petitioning below).

The Hague Convention on the Civil Aspects of International Child Abduction Convention[24] - the "Hague Convention" is a treaty that was created to assist in the prevention of *international* child abduction and the return of abducted children. Currently, at least 54 member countries have signed the Convention.[25] The treaty only applies between countries when both countries are parties to the Convention. If a country has not formally joined the Hague convention, the treaty does not apply, and a parent must use alternate methods to have the child returned. Parents, rather than governments, must institute legal proceedings on their own to seek the safe return of their children. To invoke the convention, a child must be "wrongfully removed or retained" from his or her "habitual residence", the abduction must be reported within one year of the abduction, and the child must be below the age of sixteen. The parent must then file an application seeking the return of the child with authorities

[24] Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89
[25] For an up-to-date list, *see* http://travel.state.gov/family/abduction/hague_issues_1487.html. Member States include: Argentina, Australia, Austria, Bahamas, Belgium, Belize, Bosnia & Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China (Hong Kong and Macau only), Columbia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Mauritius, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Ukraine, United Kingdom (Bermuda, Cayman Islands), United States, Uruguay, Venezuela, and Zimbabwe.

of the foreign country and seek legal representation in the country where the child has been abducted to pursue legal action through that country's legal system.

Immediate Relative – For the purposes of a family-based visa petition and a self-petition under VAWA, this term means the children under 21 years, spouse and parent of a U.S. citizen, or the parents of an adult U.S. citizen (21 years and over). Because of their close relationship to U.S. citizens, they are allowed to immediately file for lawful permanent residence once they have an approved immigrant visa, and are exempt from the numerical limitations (that cause waiting lists) imposed on immigration to the United States.

Immigration and Customs Enforcement (ICE) – This is the largest investigative arm of the Department of Homeland Security. Its officers are involved with immigration enforcement, detention, and removal within the interior of the nation. Composed of functions of the former Customs Service, Federal Protective Service, and the investigative and enforcement functions of the former INS (other than those border functions assumed by CUSTOMS AND BORDER PROTECTION (CBP), ICE is a subdivision of the Directorate of BORDER AND TRANSPORTATION SECURITY, the other two being CBP and the Transportation Security Administration. Additionally, trial attorneys who represent DHS in removal proceedings before immigration judges are ICE employees.

Immigrant Visa –An individual born outside of the United States, who is eligible, may apply for an immigrant visa, allowing him or her to legally enter the U.S. and remain here indefinitely as a permanent resident. (See "non-immigrant visa" for legal immigration status to remain temporarily).

Immigration and Nationality Act (INA) – The primary federal statute that governs the process of immigration and the treatment of immigrants in the United States.

Immigration Judge (IJ) – The person responsible for presiding over immigration court proceedings.[26] Immigration judges are employed by the Executive Office for Immigration Review (EOIR); a division of the Department of Justice.

Inadmissibility (INA section 212(a)); Grounds of – An individual who seeks admission into the United States or to receive lawful permanent residency must meet certain eligibility requirements to receive a visa and eventually be legally *admitted* into the United States. Grounds for *inadmissibility* include health related grounds, criminal and related grounds, security and related grounds, likelihood of becoming a public charge, not meeting labor certification and qualifications, and illegally entering the country. The Attorney General, through an immigration judge, will make a ruling when admissibility/inadmissibility is a factor in a case that is in immigration court. An immigration officer deciding cases (e.g. visa applications, VAWA self-petitions) for the Department of Homeland Security will make inadmissibility determinations on cases they are adjudicating.

Inspection – The process that all persons must go through when they arrive at the U.S. border, at airports, at seaports and at pre-flight inspection stations. A person is questioned and asked to present proof of his or her right to enter the country. At the end of the process of inspection, a person is either ADMITTED, REMOVED, PAROLED into the country, or allowed to withdraw their application for admission and depart voluntarily.

Intended Spouse- An intended spouse is a term that relates to Violence Against Women Act (VAWA) immigration cases and is an abused immigrant who believed in good faith at the time they married their abusive U.S. citizen or lawful permanent resident spouse that the abusive spouse was eligible to marry and was not in a previous marriage that had not been legally terminated. The intended spouse of a citizen or lawful permanent resident abuser who was a bigamist can qualify for VAWA immigration relief if they can prove they unknowingly married a bigamist, that a marriage ceremony was actually performed.

[26] INA §101(b)(4), , 8 U.S.C. § 1101(b)(4); INA § 240, 8 U.S.C. §1229a.

Lawful Permanent Residency (LPR) – A lawful permanent resident is a foreign-born individual who has the right under U.S. immigration law, to live and work permanently in the United States. Lawful permanent residents can still be put in removal proceedings and deported, particularly if they are convicted of crimes. Naturalization protects against deportation and therefore victims should be encouraged to naturalize as soon as eligible. An individual who has a green card is either a lawful permanent resident or a conditional permanent resident. See "adjustment of status."

Legacy INS – A reference to the Immigration and Naturalization Service (*e.g.*, "a legacy INS memo") that acknowledges its status as the predecessor to the DEPARTMENT OF HOMELAND SECURITY.[27]

Medicaid and State Child Health Insurance Program (SCHIP)[28] – The Medicaid program provides health insurance to low-income individuals. The State Child Health Insurance Program (SCHIP) provides health care to low-income children. Under PRWORA, most individuals who entered the United States after August 22, 1996, are barred from receiving all non-emergency Medicaid for the first five years after they become qualified immigrants.[29]

NACARA (Nicaraguan Adjustment and Central American Relief Act) of 1997[30]

VAWA NACARA 202 creates self-petitioning for Nicaraguan or Cuban battered spouses and children who have been subjected to extreme cruelty by Nicaraguan or Cuban abusers who are unable to adjust their status to lawful permanent residency due to their abuser's failure to file for lawful permanent residency for himself. The battered spouse or child must have been physically present in the United States on the date the application is filed (which must have been before July 5, 2007).

VAWA NACARA 203 self-petitioning offers protection from deportation and access to lawful permanent residence for abused immigrants who were the spouses and children of El Salvadoran, Guatemalan and Eastern European abusers at the time the abusive spouse or parent filed for or received suspension of deportation, cancellation of removal, asylum, or temporary protected status under NACARA 203. VAWA NACARA 203 also allows battered spouses, children, and children of the battered spouse temporary protection from removal even if the spouse is no longer married to the abuser, as long as they were married at the time that the immigrant or the spouse or child filed an application to suspend or cancel the removal.

Naturalization – This is the process by which foreign-born persons, including lawful permanent residents, obtain citizenship. Requirements include a period of continuous residence in the U.S. and physical presence in

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[27] New Jargon Alert: "Legacy INS" " posted on AILA Info-Net. Doc. No. 03060442 (June 4, 2003).

[28] *See* 8 U.S.C. § 1641 (2004) for the definition of Qualified Alien, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, A.G. Order No. 2353-2001. 66 Fed. Reg. 3,613 (Jan. 16, 2001) (specifying emergency Medicaid Eligibility)

[29] Whether an immigrant victim of sexual assault or domestic violence will qualify for Medicaid covered health care services will depend on the victim's immigration status, when they attained any legal immigration status, their state of residence and date of first entry into the United States. Persons who attained "qualified alien" including legal permanent resident status before August 22, 1996 will have the most access to Medicaid funded health care services. VAWA self-petitioners are an example of persons who may qualify but may have to wait 5 years if they entered the U.S. after 1996. Some states have chosen to offer access to funded health care to "qualified immigrants" who otherwise would have to wait 5 years. Other states offer funded health care to persons "permanently residing in the United States under color of law" which would include immigrant victims of sexual assault who have received interim relief in U visa cases. For further information and state-by-state charts on health care options for immigrant victims, see chapter 17 of this manual "Access to Health Care for Immigrant Victims of Sexual Assault". For state-by state chart on access to a range of public benefits see NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants, in* IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).

[30] *See Appendix B: Special Immigrant Juvenile Status Legislative History, in* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS (2017), http://niwaplibrary.wcl.american.edu/pubs/appendix-b-sijs-legislative-history/.

the United States, an ability to read, write, and speak English, and good moral character. Some requirements can be waived depending on the circumstances. Immigrants married to U.S. citizens can apply for Naturalization after 3 years in lawful permanent residency. Other immigrants have to wait 5 years to file for naturalization. Immigrant victims who attain lawful permanent residency through VAWA can file to naturalize after 3 years (3 years only applies to petitioners who had USC abusers and LPR abusers).

Non-immigrant Visas – "Non-immigrant" visas are issued to persons granted permission to remain temporarily (not permanently) in the United States. If an immigrant is granted permission to live permanently in the United States they will receive an "immigrant" visa. (See "immigrant visa.") Many different classes of non-immigrant visas are available to individuals intending to enter the United States temporarily. (*See examples and explanations below under "visa").*

Notice to Appear (NTA) – A document issued by the Department of Homeland Security to commence immigration removal proceedings against an immigrant in immigration court.[31] The Notice to Appear[32] is usually issued by an immigration enforcement official and served on the immigrant who DHS believes is not legally present in the United States. If an immigrant victim has been arrested or detained by immigration officials, the NTA will often be issued and served on the immigrant before the immigrant victim is released from DHS custody. Once the NTA has been issued it has to be filed with the immigration court for removal proceedings to be opened against an immigrant.[33]

ORR – Department of Health and Human Services Office of Refugee Resettlement (ORR). The Office of Refugee Resettlement oversees refugee resettlement assistance programs and programs for victims of trafficking. This assistance includes, among other things, cash and medical assistance, employment preparation and job placement, skills training, English language training, legal services, social adjustment and aid for victims of torture.[34]

Parental Kidnapping Prevention Act (PKPA)[35]– The Parental Kidnapping Protection Act (PKPA) was designed to discourage interstate conflicts, deter interstate abductions, and promote cooperation between states about interstate custody matters. As part of the Violence Against Women Act of 2000, the PKPA's definition of "emergency jurisdiction" was broadened to cover domestic violence cases consistent with the UCCJEA, which is the Uniform Child Custody Jurisdiction and Enforcement Act[36] (see explanation below under this term). The PKPA tells courts when to honor and enforce custody determinations issued by courts in other states or Native American tribal jurisdictions. Unlike the UCCJEA, the PKPA does not instruct courts as to when they should exercise jurisdiction over a new custody matter. Instead, the court must follow the PKPA when 1) they are deciding whether to enforce a custody determination made by a court in another state or tribe; 2) they are deciding whether to exercise jurisdiction even though there is a custody proceeding already pending in another jurisdiction, and 3) they are asked to modify an existing custody or visitation order from another jurisdiction.

Parole – Parole is permission by the Department of Homeland Security that allows an immigrant to physically

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[31] INA §239, 8 U.S.C. § 1229.
[32] The Notice to Appear replaced the Order to Show Cause previously used to initiate deportation cases.
[33] Notices to Appear that have been issued in violation of VAWA confidentiality statutory protections can be cancelled. *See* Leslye E. Orloff, *Chapter 3: VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections*, *in* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT & LEGAL MOMENTUM, EMPOWERING SURVIVORS (2015), http://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose/.
[34] For more information, please see http://www.acf.hhs.gov/programs/orr/mission/functional.htm.
[35] *See* 28 U.S.C. § 1738A (2000).
[36] The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is newer legislation enacted in many states to update the prior Uniform Child Custody Jurisdiction Act. As of June 2007, the UCCJEA has been enacted in 46 states, the District of Columbia, and U.S. Virgin Islands. As of June 2007, four states have not yet adopted the UCCJEA: Massachusetts, Missouri, New Hampshire and Vermont. Uniform Family Law Update, June 2007, http://nccusl.org/Update/Docs/JEBUFL/Jun%2007%20JEB%20Newsletter.pdf. These states instead continue to use their prior version of the Uniform Child Custody Jurisdiction Act.

enter the United States temporarily for urgent humanitarian reasons or for significant public benefit. The entry is not a formal admission to the United States.[37] VAWA victims applying from abroad can receive parole into the United States once their application has been approved. This provision can also be used to help bring their children or other family members who qualify for VAWA relief into the country.

Permanent Resident – See "Lawful Permanent Resident."

Prima Facie Determination – Battered immigrants filing VAWA self-petitions who can establish a "prima facie" case are considered "qualified aliens" for the purpose of eligibility for public benefits. The VAWA Unit of the Vermont Service Center at the Department of Homeland Security reviews each petition initially to determine whether the self-petitioner has addressed each of the requirements necessary to receive a self-petition. If DHS officials believe she has set forth a valid case they issued an order that is called a prima facie determination. If DHS makes a prima facie determination, the self-petitioner will receive a Notice of Prima Facie Determination. The notice provides evidence of immigration status that may be presented to state and federal agencies that provide public benefits.

Priority Date – The date that the application for an immigrant visa is filed becomes the priority date to establish an immigrant's place in line to wait for a visa and to determine when the person can apply for lawful permanent residency. This means the date on which a person submitted documentation establishing prima facie eligibility for an immigrant visa. For family-based immigrants, a person's priority date is the date on which he or she filed the family-based visa petition.[38] If the immigrant relative has a priority date on or before the date listed in the Visa Bulletin, then he or she is currently eligible for an immigrant visa. For employment-based cases, it is the date of the filing of the LABOR CERTIFICATION application, or if no labor certification is required, the date the immigrant visa petition is filed.[39] In VAWA self-petitioning cases immigrant victims can use as their priority date the date that their abusive citizen or lawful permanent resident spouse or parent filed any prior family based visa petition for them, whether or not that case was ever decided and whether or not that case was withdrawn by the abuser. This allows the immigrant victim to resume the place in line they would have had if their abuser had not withdrawn or had followed through on the original family-based visa petition.

PRUCOL[40] – PRUCOL stands for "permanently residing in the United States under color of law." PRUCOL is a term that generally describes immigrants whom the Department of Homeland Security (DHS) knows are in the United States, but whom the DHS is not taking steps to deport or remove from the country. Some states extend access to health care and some other public benefits to PRUCOL immigrants.[41]

PRWORA and IIRAIRA – The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or Welfare Reform Act)[42] and the Illegal Immigration Reform and Immigration Responsibility Act

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[37] INA §212(d)(5)(A); 8 USC §1182(d)(5)(A); 8 C.F.R. § 212.5.; New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

[38] 8 C.F.R. §204.1(c).

[39] 8 C.F.R. §204.5(d).

[40] "Permanently Residing Under Color Of Law"-Prior to the passage of the Personality Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.) those who were permanently residing in the United States under color of law (PRUCOL's) were eligible to receive federal public benefits. This group consisted of immigrants whom CIS was aware of their presence in the United States. The PRWORA cut off access to federal public benefits for this group of immigrants, but several states have passed laws providing access to state-funded Temporary Assistance for Needy Families (TANF) for PRUCOL's. *See* NATIONAL IMMIGRATION LAW CENTER, *States Providing Benefits to Immigrants Under 1996 Welfare & Immigration Laws -- State Responses, in* IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 2-1, 14 (1998).

[41] *See* Leslye Orloff, Amanda Baran, & Phoebe Mounts, *Chapter 17: Access to Health Care for Immigrant Victims of Sexual Assault, in* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2014) http://niwaplibrary.wcl.american.edu/pubs/ch17-accesshealthcare/.

[42] PRWORA see supra note 95.

of 1996 (IIRAIRA)[43] substantially altered most immigrants' eligibility to receive many public benefits. These laws eliminated eligibility for most immigrants for Supplemental Security Income (SSI)[44] and Federal Food Stamps, limited access to certain other federal programs (including Medicaid funded health care), and gave states the discretion to determine whether immigrants can qualify for state and local public benefits programs.

Public Charge – This term describes immigrants who at the time of admission are likely to become primarily dependent on the U.S. government for financial support because of their health, education, assets, or family status. [45] If an immigrant is deemed likely to become a public charge they are thereby inadmissible.[46] Immigration officials and immigration judges are barred from considering any public benefits received by immigrant victims who attained immigration relief through VAWA or victims eligible for immigration benefits related to their having been victims of family violence in making public charge determinations.[47] Likewise, DHS does not consider public benefits received by trafficking victims when making public charge determinations.

Qualified Immigrant – Category created by PRWORA solely to assess eligibility for public benefits purposes. Inclusion in this category is determined by immigration status. Qualified immigrants have more access to federal public benefits than many other immigrants, but less access than citizens. Which federal or state funded public benefits they are eligible to receive depends on their: immigration status, state, date of first entry into the United States, and the specific benefit they are seeking. The most difficult benefits to access are federal means tested public benefits that not all qualified immigrants can access – Temporary Aid to Needy Families, Medicaid, State Child Health Insurance Program (SCHIP), Food Stamps and Supplemental Security Income (SSI). Under the statue qualified immigrants are called "qualified aliens."

Refugee – An individual who is unable or unwilling to return to her country because of past persecution or a well-founded fear of future persecution on account of her race/ethnicity, religion, nationality, membership in a particular social group, or political opinion. An individual who is outside the U.S. and meets this definition can be admitted to the United States as a refugee. An individual already in the United States must apply for and be granted asylum to receive protection as a refugee. (*See "asylum" above*).

Removal – Removal, also known as deportation, is the process through which a non-citizen who is determined to be unlawfully in the U.S. is ordered to leave the United States and is returned to his or her country of origin by U.S. immigration officials. In some cases the person is removed to a third country that agrees to accept them.

Removal Proceedings – Formerly known as deportation proceedings, this is the process by which immigrants are required to appear before an immigration judge. The immigrant has an opportunity to request relief if eligible. The proceedings may result in an immigrant obtaining status or being ordered removed (deported). The judge can make other procedural orders as well.

Second Preference – This refers to the immigrant visa category for family-based petitions of spouses, children, and unmarried sons or daughters of lawful permanent residents.

Section 245(i) – Congress first enacted INA §245(i) in 1994 to allow non-citizens who were present in the United States without lawful immigration status and who were otherwise eligible for permanent residence (through a family or employment-based petition) to apply to adjust their status to that of a lawful permanent

[43]Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (codified as amended at 8 U.S.C. § 1101 et seq.)
[44] SSI is a cash benefit program for low-income disabled, blind and elderly individuals.
[45] INA § 212(a)(4)(B), 8 U.S.C. § 1182(a)(4)(B). *See also* 64 Fed. Reg. 28689-01 (May 26, 1999).
[46] INA § 212(a)(4)(B), 8 U.S.C. § 1182(a)(15)(F). *See also* 64 Fed. Reg. 28689-01 (May 26, 1999).
[47] INA §212 (p); See also field Guidance on Deportability and Inadmissibility on Public Charge Grounds, INS, 64 Fed. Reg. 28,689 (May 26, 1999).

resident without requiring them to physically leave the United States.[48] The section imposed a penalty fee (up to $1,000) in addition to the normal fees for processing the applications from. The provision initially expired in January 1998, but was extended in 2000 and expired again on April 30, 2001. Upon expiration of this provision, most non-citizens who are out of legal immigration status are ineligible to adjust status and must leave the country, unless their immigrant visa petition or application for labor certification was filed prior to April 30, 2001. VAWA self-petitioners, however are eligible to adjust status to that of a lawful permanent resident even if they are undocumented.

Self-Petition – Under the Violence Against Women Act, certain abused spouses, children, or parents or parents of abused children can file their own petitions to obtain lawful permanent resident status confidentially and without the cooperation of an abusive spouse, parent, or son or daughter if the abuser is a U.S. citizen or lawful permanent resident. Victims of elder abuse, battered spouse waiver applicants, VAWA Cuban adjustment applicants, VAWA HRIFA (Haitian), VAWA NACARA (Nicaraguans, Cubans, Salvadorans, Guatemalans, Former Soviet Union nationals) are included in the category of VAWA self-petitioners. Children of the self-petitioner can also obtain legal immigration status by being included in their parent's self-petition. Undocumented immigrant children included in their parent's self-petition are called "derivatives" because they derive a benefit from their parent's application for legal immigration status. (See *VAWA Immigration Relief* at end of chapter).

Special Immigrant Juvenile Status (SIJS)- Is a humanitarian immigration benefit available to unmarried immigrant children who suffered abuse, neglect, or abandonment perpetrated by one or both of the child's parents either in the U.S. or abroad. . In order to file a child must obtain a court order from a state court with jurisdiction over the custody, care or placement of the child and must file for special immigrant juvenile status while the child is of an age that the state court still has jurisdiction over the child and before the child turns 21. The state court order must address the custody or placement of the child and must include findings that it is not in the child's best interests to return to their home country and that the child cannot be reunified with parent or parents due to abuse, abandonment, neglect or similar basis under state law.

SSI – Supplemental Security Income (SSI) is a program that provides cash assistance to low-income individuals who are aged, blind, or disabled. After the enactment of PRWORA, an otherwise eligible person could be denied SSI cash assistance solely on the basis of his/her immigration status. The only battered immigrants who are currently eligible to receive SSI are those who were lawful permanent residents and were receiving SSI on August 22, 1996, or those who fit into one of the other categories of eligible immigrants.

State Child Health Insurance Program – See Medicaid

State Parental Kidnapping Statutes – Parental kidnapping statues are generally designed to ensure parents equal access to their children by criminally sanctioning a parent who hides the child from the other parent. Currently almost every state makes custodial interference by parents or relatives of the child a crime. While these statutes may share similarities in name, purpose, and structure, statutory provisions concerning the definition of lawful custodian, the availability of statutory exceptions or defenses, and the severity of the criminal penalties vary greatly between states. In counseling, a survivor who has already left or wishes to leave that state with her children should carefully consult the state statutes in the client's home state and the state to which the client is considering moving to best inform the client of the potential legal ramifications of her

[48]Under immigration law, leaving and returning to the United States whether required as part of a visa application or not, often has harsh consequences. Leaving the United States after having been unlawfully in the United States can trigger application of multi-year bars to reentry (e.g. 3, 10 or more years). Immigrants who remain in the United States and have not left or are not required to leave can attain lawful permanent residency without risking separation from children and family members in the United States. For this reason, it is important to advise victims for VAWA immigration benefits against international travel.

decision to flee. For immigrant victims it is particularly important to avoid any criminal convictions that can complicate a victim's ability to attain VAWA or U visa related immigration relief.[49]

Stay of Deportation/Stay of Removal – A stay of removal is an administrative decision by the government to stop temporarily the deportation or removal of an immigrant who has been ordered removed or deported from the United States.[50] Victims who were granted U-visa interim relief were granted stays of removal. [51]

Suspension of Deportation – Suspension of deportation is terminology that was used prior to 1996, to refer to what is now called "cancellation of removal" (see above). Some immigrant victims will have old deportation orders, in cases initiated prior to 1992 and will need to file motions to reopen those immigration cases. For this reason post 1996 VAWA related immigration laws continue to refer to, cite to, and make amendments to VAWA suspension of deportation. Citations to Immigration and Naturalization Act Section 244 (a)(3) ("as in effect on March 31, 1997" or "as in effect before the Title III-A effective date of section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996") are references in statute to VAWA suspension of deportation and NOT "temporary protected status."[52]

TANF – Temporary Assistance for Needy Families (TANF) provides cash payments, vouchers, social services, and other types of assistance to families in need. PRWORA gives states the option to grant TANF to immigrant families. Most states have decided to provide assistance to qualified immigrants who were in the United States before August 22, 1996, and many are also providing access to TANF for those who entered after August 22, 1996, following the expiration of the five-year bar.[53] Other states have decided to offer state-funded TANF to certain categories of immigrants or battered immigrants who would otherwise have no access to benefits, regardless of immigration status. (See "PRUCOL")

Undocumented immigrants– Undocumented immigrants are individuals that do not have lawful immigration status granting them permission to reside in the United States. Some are individuals who entered the United States without being inspected by immigration authorities (i.e. illegally crossed the border). Others entered the U.S. on valid immigration visas but they stayed beyond their period of authorized stay. Some forms of temporary legal immigration status (See "non-immigrant visas.") also place restrictions on the holder's activities while in the United States, such as barring them from working in the U.S. or requiring them to attend a particular school or maintain employment with a particular employer. Individuals who fail to comply with the terms of their visa (i.e. working when they are not allowed or failing to attend school when they are required) become undocumented.

Unlawful Entrants – Individuals who entered the U.S. without admission are unlawful entrants and may be inadmissible. Depending on their date of entry and the relief they apply for, applicants, such as victims of domestic violence, may qualify for an exception to this inadmissibility criteria for unlawful entry. [54]

U.S. Citizen (USC) – An individual may become a U.S. citizen through several means. An individual born in the United States or in certain U.S. territories such as Guam, U.S. Virgin Islands, and Puerto Rico is automatically a citizen at birth. Additionally, an individual born abroad may acquire or derive U.S. citizenship through a U.S. citizen parent or parents. Many lawful permanent residents apply through the naturalization

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[49] *See* Chapter 6.6 of Breaking Barriers "Appendix" for further information and the state criminal parental kidnapping statutes charts.
[50] *See* 8 §§CFR 241.6, 1241.6.
[51] "New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status." New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).
[52] Many codifications of the Immigration and Nationality Act are incorrect with regard to this section.
[53] NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants, in* IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).
[54] INA § 212(a)(6)(A)(2013); 8 U.S.C. § 1182(a)(6)(A)(2018).

process to become a U.S. citizen. Finally, certain people serving in active-duty status for the U.S. military may qualify for expedited U.S. citizenship.

United States Citizenship and Immigration Services (CIS) –The division of the Department of Homeland Security (DHS) responsible for adjudicating immigration benefits. CIS adjudicates a range of applications filed for immigrants seeking legal immigration status including: visas, asylum, and naturalization applications. Cases of immigrant victims filing VAWA self-petitions, U and T visa applications, battered spouse waivers and battered spouse work authorizations are all adjudicated by CIS.

Uniform Child Custody Jurisdiction Act (UCCJA)[55] – Original state laws governing jurisdictional determinations in interstate custody cases. The UCCJA, or its successor statue the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), discussed next, must be considered anytime a victim is considering moving across state lines with her children.

The UCCJA was created to promote common practices among the states with regard to jurisdiction over, and enforcement of child custody determinations. The goal was to foster a uniform approach that would result in fewer conflicting court rulings regarding the same children; minimizing or preventing parental kidnapping, jurisdictional conflicts, and re-litigation of custody decisions issued by courts in other states. The UCCJA's primary purpose is to help determine which court has appropriate jurisdiction over a custody matter by using the four following bases as a guide: home state, significant connection, emergency, and more appropriate forum. The UCCJA was not as effective in achieving these goals as expected and it contained few protections for battered women. As a result many jurisdictions began to replace the UCCJA with improved UCCJEA protections. The versions of the UCCJA or UCCJEA adopted in each state can vary slightly from the model code, but all state family laws include either a UCCJA or UCCJEA.

Uniform Child Custody Uniform and Enforcement Act (UCCJEA)[56] This is the successor statute to the UCCJA and is designed to be more helpful in preventing abductions of children. Like the UCCJA, the UCCJEA also utilizes the four jurisdictional bases of home state, significant connection, emergency, and more appropriate forum. However, unlike the UCCJA, the UCCJEA prioritizes home state jurisdiction. It also expands the basis for emergency jurisdiction to more fully include and protect a battered parent's decision to escape from her abuser with her children. While a temporary emergency jurisdiction order that a battered woman receives is still subject to the actual "home" state's issuance of a final custody order, the factors a "home" state must consider in declining jurisdiction offer greater protection for survivors of domestic violence. For example, a court may consider whether domestic violence had occurred, and is likely to continue, and which state could best protect the parties and the child.

Violence Against Women Act (VAWA) – In 1994, Congress enacted the Violence Against Women Act. This was the first piece of federal legislation that articulated the role of the federal government in stopping violence against women. VAWA brought about far-reaching reforms in the criminal and civil justice system's approach to domestic violence, sexual assault, stalking, dating violence and trafficking. VAWA's dual goals were to enhance protection and help for victims and to hold perpetrators accountable for their crimes. VAWA provides grants to governmental and non-governmental programs helping victims, creates federal crimes, enforces state issued protection orders, provides immigration relief and offers confidentiality and privacy protections to victims. VAWA was designed to offer protection to all victims of violence against women, explicitly including underserved victims (e.g. immigrants, women of color, disabled, rural victims). To further this goal and remove control over immigration status and threats of deportation as tools that could be used by abusers, traffickers and

[55] Drafted by the National Conference of Commissioners on Uniform State Laws, and by it approved and recommended for enactment in all the states at its conference meeting July 22-Aug. 1, 1968; *see also* 28 U.S.C. § 1738A(c)(2018).
[56] Uniform Child-Custody Jurisdiction and Enforcement Act (1997), 9(1A) U.L.A. 657 (1999); *See also* 28 U.S.C. § 1738A(c)(2)(C).

crime perpetrators to avoid or undermine criminal investigations and prosecutions, VAWA 1994, 2000 and 2005 each contained immigration relief.

VAWA Unit of the Vermont Service Center – The Citizenship and Immigration Services (CIS) Vermont Service Center, houses the specially trained unit at the Department of Homeland Security that is responsible for adjudicating VAWA cases filed by immigrant victims of violence against women. The VAWA Unit adjudicates a wide range of violence against women related applications including: VAWA self-petitions, T-visas, U-visas, adjustments (lawful permanent residency applications), and employment authorizations related to VAWA cases (VAWA Cuban, VAWA NACARA, VAWA HRIFA petitions, battered spouse waivers, parole of VAWA petitioners and their children, children of victims who have received VAWA cancellation). Spouses who have been battered or subjected to extreme cruelty perpetrated by their non-immigrant A visa holder, E iii visa holder, or G visa holder, or H visa holder spouse, and children of the battered spouses can also receive employment authorization from the VAWA Unit.[57]

VAWA Confidentiality – VAWA created this provision to prevent batterers and crime perpetrators from accessing VAWA self-petitioners' information through DHS. Under VAWA confidentiality, immigration enforcement agents are also prohibited from using information from an abuser to act against an immigrant victim. Additionally, VAWA confidentiality bars enforcement actions at protected locations including shelters, victim services programs, rape crisis centers, courthouses, family justice centers, supervised visitation centers and community based organizations.[58]

Visa – The term visa has two meanings. A person who has attained legal immigration status in the United States is colloquially called a "visa" holder. A "visa" is also an official document issued by the U.S. Department of State at an embassy or consulate abroad. A visa grants an individual permission to request entry into the United States at a port of entry. If permission is granted, the applicant is admitted into the United States in a particular status, such as a U-visa. Visas may be *immigrant* visas that allow the individual who qualifies to live and work permanently in the United States – lawful permanent residency. An individual having a residence in a foreign country that he or she has no intention of abandoning, who wishes to enter the United States temporarily, will be issued a temporary visa referred to in immigration law as a *non-immigrant* visa. Nonimmigrant visas include, but are not limited to:

A Visa –This temporary visa is issued to diplomats, ambassadors, public ministers, employees or consular officers who have been accredited by a foreign government that is recognized by the United States and accepted by the President or the secretary of state. The A-visa includes the immigrant's immediate family. The immigrant's personal employees, such as nannies, also receive an A-visa. [59]

B Visa – This temporary visa is issued to tourists (business or pleasure). Tourists are generally admitted to the U.S. for no longer than six months. [60]

F Visa –This temporary visa is available to bona fide students who are coming to the United States temporarily and who are pursuing a full course of study at an established college, university, or other academic institution. The spouse and minor children of the student also receive F-visas.[61]

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[57] INA § 106(a) (2013); 8 U.S.C. § 1105(a) (2018)
[58] For a full discussion of VAWA confidentiality protections *See* Leslye E. Orloff, *Chapter 3: VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections*, *in* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT & LEGAL MOMENTUM, EMPOWERING SURVIVORS (2015), http://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose/.
[59] INA § 101(a)(15)(A) (2013), 8 U.S.C. § 1101(a)(15)(A) (2018).
[60] INA § 101(a)(15)(B) (2013), 8 U.S.C. § 1101(a)(15)(B) (2018).
[61] INA § 101(a)(15)(F) (2013), 8 U.S.C. § 1101(a)(15)(F) (2018).

G Visa – The G visa is available to representatives and employees of international organizations. The visa is also available to members of the individuals' immediate family, personal employees of the individual, and the immediate families (e.g. spouses and children) of the personal employees. [62]

H Visa – This is the temporary visa available to individuals who come to the United States temporarily to perform services or labor. This also includes a range of workers from technology industry workers to fashion models. The spouse and minor children of the immigrant also receive a specific type of H-Visa. [63]

J Visa – This temporary visa is issued to exchange visitors and foreign physicians. J visa holders can include scholars, teachers, professors, leaders in a field, among others, coming to the United States temporarily. Some J visa holders are subject to a two-year foreign residency requirement. They are required to leave the United States for two years and are barred from seeking H-Visa status or lawful permanent residency before complying with this requirement. The visa holder's spouse and minor children can also receive J-Visas. [64]

T Visa – This visa is available to individuals who are victims of severe forms of trafficking in persons and who are willing to assist in the investigation and prosecution of their traffickers. Severe forms of trafficking include sex trafficking and transporting, harboring, or obtaining a person for labor by force, fraud, or coercion. A T-visa applicant under 21 years of age can apply for T-visas for their spouse, children, parents, and unmarried siblings under 18. T Visa applicants 21 years of age or older can apply for T-visas for their spouse and children. [65] The T Visa lasts for four years. After three years, T visa recipients can apply for lawful permanent residency. If the Attorney General certifies that the investigation has concluded, T visa recipients can apply for lawful permanent residency sooner than three years.

U Visa – This visa is available to individuals who are victims of substantial physical or mental harm as a result of having been a victim of criminal activity. In order to receive a U visa, victims must provide a certification from a federal, state, or local law enforcement official, prosecutor, or judge establishing that the victim has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of criminal activity. Victims are eligible whether or not the perpetrator is convicted, whether or not criminal prosecution is initiated, whether or not the perpetrator is served with a warrant, and whether or not they are called as a witness in the prosecution as long as they are helpful in an investigation. For an immigrant under 21 years of age, the spouse, children, unmarried siblings under 18, and parents can receive U Visas based upon the immigrant crime victim's receipt of U visa. U-Visa applicants 21 years or older can apply for U Visas for their spouse and children.[66]

[62] INA § 101(a)(15)(G) (2013), 8 U.S.C. § 1101(a)(15)(G) (2018).
[63] INA § 101(a)(15)(H) (2013), 8 U.S.C.§ 1101(a)(15)(H) (2018).
[64] INA § 101(a)(15)(J) (2013), 8 U.S.C. § 1101(a)(15)(J) (2018).
[65] INA § 101(a)(15)(T) (2013), 8 U.S.C. § 1101(a)(15)(T) (2018).
[66] INA § 101(a)(15) (U)(2013), 8 U.S.C. § 1101(a)(15)(U) (2018).